

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Manolo Gaud and Concepcion Gaud,)	
)	C/A No. 6:06-cv-3574-GRA-BHH
Plaintiffs,)	
)	
v.)	ORDER
)	(Written Opinion)
Havana Tropical Café and Julio Torres,)	
)	
Defendants.)	
_____)	

This matter is before the Court for a review of the magistrate's Report and Recommendation made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02(B)(2)(e), D.S.C., and filed on August 24, 2007. Defendant filed this "motion to deny charges" on May 25, 2007. The magistrate recommends denying Defendant's motion stating that "[e]ven were the motion to be interpreted as a motion to dismiss or for summary judgment, defendant Torres has made no effort whatsoever to meet his burden under either Fed. R. Civ. P. 12 or 56 to demonstrate that dismissal of the plaintiffs' claims is warranted." Report and Recommendation. The magistrate further recommended that if this Court determines that the motion is an Answer to the Complaint, that it be re-docketed. *Id.*

Defendant brings this claim *pro se*. This Court is required to construe *pro se* pleadings liberally. Such pleadings are held to a less stringent standard than those

drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). This Court is charged with liberally construing a pleading filed by a *pro se* litigant to allow for the development of a potentially meritorious claim. *Boag v. MacDougall*, 454 U.S. 364, 365 (1982).

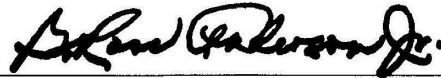
The magistrate makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and this Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). This Court may also "receive further evidence or recommit the matter to the magistrate with instructions." *Id.*

In the absence of objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Objections to the Report and Recommendation have not been filed. The Court has reviewed Defendant's "motion to deny charges" and re-docketed it in Docket 63 as the Answer to the Complaint.

After a review of the magistrate's Report and Recommendation, this Court finds that the report is based upon the proper law. Accordingly, the Report and Recommendation is accepted and adopted in its entirety.

IT IS THEREFORE ORDERED that Defendant's motion be DENIED.

IT IS SO ORDERED.



G. ROSS ANDERSON, JR.
UNITED STATES DISTRICT JUDGE

September 20, 2007
Anderson, South Carolina

NOTICE OF RIGHT TO APPEAL

Defendant is hereby notified that he has the right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure. Failure to meet this deadline, as modified within Rule 4, will waive the right to appeal.